

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Joseph Wayne Mabry,

Plaintiff,

vs.

Larry Powers, Spartanburg Co. Det. Facility,

Defendant.

C.A. No.: 4:08-03066-RBH

ORDER

This matter is before the court for review of the Report and Recommendation of United States Magistrate Judge Thomas E. Rogers, III, made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. See Mathews v. Weber, 423 U.S. 261, 270-71 (1976). The court is charged with making a de novo determination of those portions of the Report and Recommendation to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. See 28 U.S.C. § 636(b)(1).

No objections were filed to the Report and Recommendation. The Report and Recommendation was mailed to the Plaintiff at his last known address (docket entry #9), and was returned to the court on October 17, 2008. The return envelope indicated “no longer at this institution.” The plaintiff was notified by Order (docket entry #6) to notify the court in writing

of any change of address. The court has not been notified of any change of address. In the absence of objections to the Report and Recommendation of the Magistrate Judge, this court is not required to give any explanation for adopting the recommendation. See Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983). In addition, the plaintiff has failed to prosecute and the action must be dismissed on the basis of failure to prosecute.

After a thorough review of the Report and Recommendation and the record in this case, the court adopts Magistrate Judge Rogers' Report and Recommendation and incorporates it herein. It is therefore

ORDERED that this case is hereby DISMISSED without prejudice and without issuance and service of process for the reasons stated by the Magistrate Judge and pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for failure to prosecute.

IT IS SO ORDERED.

s/ R. Bryan Harwell
R. Bryan Harwell
United States District Judge

Florence, South Carolina
October 29, 2008